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Sun Microsystems, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.,

Plaintiff – Counterclaim
Defendant,

v.

SUN MICROSYSTEMS, INC.,

Defendant -
Counterclaimant.

CASE NO. 3:07-CV-06053 EDL (JCS)

**DECLARATION OF CHRISTINE K.
CORBETT IN SUPPORT OF SUN
MICROSYSTEMS, INC.'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS
FROM NON-PARTY ORRICK,
HERRINGTON & SUTCLIFFE AND SUN'S
EX PARTE MOTION TO SHORTEN TIME
ON SUN'S MOTION TO COMPEL**

**Date: TBD
Time: TBD
Courtroom: E, 15th Floor
Hon. Elizabeth D. Laporte**

I, Christine K. Corbett, declare as follows:

1. I am an attorney at law duly licensed to practice before this Court and am a partner with the law firm of DLA Piper US LLP, attorneys for Sun Microsystems, Inc. ("Sun"). I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would competently testify thereto.

2. On January 22, 2008, Sun subpoenaed Orrick, Herrington & Sutcliffe ("Orrick")

1 for the production of documents relating to the Whipsaw Litigation. Attached hereto as **Exhibit**
2 **A** is a true and correct copy of Sun's subpoena to Orrick.

3 3. In April, 2008, at Orrick's request, Sun agreed to reimburse Orrick for costs
4 incurred in copying those documents that would be provided to Sun. At the time of this
5 agreement, Orrick's counsel indicated that the copy costs would be approximately .08-.09 cents
6 per page.

7 4. In a further effort to minimize expenses on Orrick, Sun also agreed that Orrick
8 would not be required to prepare a privilege log, subject to revisiting the issue should the need
9 arise.

10 5. On or about June 19, 2008, I spoke with Orrick's counsel, Scott Lovernick of
11 Schwartz & Cera, regarding status of the document production. Mr. Lovernick informed me that
12 Orrick would not produce any documents until Sun had paid all invoices relating to the copy
13 costs. I told Mr. Lovernick that it was unreasonable to hold the documents (especially after Sun
14 had requested the documents in January, 2008) until payment was received. I did agree, however,
15 to process the invoice (once received) promptly. After a short discussion, Mr. Lovernick agreed
16 that the request was unreasonable and indicated that he would be producing the documents
17 shortly.

18 6. On or about June 25, 2008, Mr. Lovernick spoke with one of my colleagues and
19 informed her that Orrick refused to produce any documents until Sun paid all outstanding
20 invoices.

21 7. That same day, Mr. Lovernick provided, for the first time, four invoices to Sun
22 totaling \$21,402.52. Attached hereto as **Exhibit B** is a true and correct copy of Mr. Lovernick's
23 June 25, 2008 correspondence to me, attaching the four invoices for payment.

24 8. Despite repeated attempts to contact Mr. Lovernick, I finally spoke with Mr.
25 Lovernick on June 30, 2008 and explained that it was unreasonable to require Sun to pay for
26 copying documents that were never provided to Sun. I further explained that Orrick's decision to
27 incur \$13,000.33 for copying the original documents was unnecessary given that the original
28 documents could have been electronically scanned for production to Sun. I further expressed

1 concern that Orrick was aware of a \$11,856.98 invoice since April 2, 2008, yet had not made any
2 mention of this invoice until June 25, 2008.

3 9. From June 30 through July 2, I spoke with Mr. Lovernick on multiple occasions in
4 an attempt to resolve the parties' dispute. During one telephone conversation, Mr. Lovernick
5 agreed that it was unreasonable for Sun to pay for copies that were never provided to Sun. The
6 next day, however, Mr. Lovernick indicated that he was under strict direction from Orrick that
7 Sun was required to pay for all copy costs.

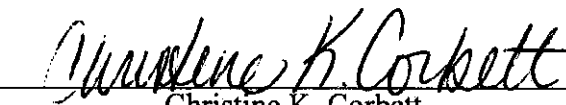
8 10. On July 3, 2008, Douglas Schwartz of Schwartz & Cera and Mr. Lovernick called
9 me to further discuss the dispute. Mr. Schwartz became extremely hostile and irate on the
10 telephone and threatened to file a motion for sanctions against me. Mr. Schwartz then insulted
11 my legal experience and indicated that Orrick would not be producing any documents. While I
12 was attempting to discuss the matter, Mr. Schwartz abruptly hung up the phone on me.

13 11. During the July 3, 2008 telephone conference with Mr. Schwartz, Mr. Schwartz
14 indicated that Orrick had 120 boxes of documents relating to the Whipsaw Litigation.

15 12. During the parties' meet-and-confer telephone conferences, Mr. Lovernick
16 indicated that he believes that the remaining 23,908 pages that were not produced were either
17 duplicative of a document that was produced or privileged.

18 13. Sun has fully complied with Civil Local Rule 37-1(a).

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct. Executed on July 8, 2008 in East Palo Alto, California.

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23 Christine K. Corbett
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